United Nations CCPR/C/112/D/2131/2012

International Covenant on Civil and Political Rights

Distr.: General
5 January 2015

Original: English

Human Rights Committee

Communication No. 2131/2012

Views adopted by the Committee at its 112th session (7–31 October 2014)

Submitted by:	Viktor Leven (represented by counsel, Anastasia Miller)
Alleged victim:	The author
State party:	Kazakhstan
Date of communication:	19 January 2012 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 23 February 2012 (not issued in document form)
Date of adoption of Views:	21 October 2014
Subject matter:	Conviction with a fine and expulsion from the State party, of a foreign national, for participating in religious ceremonies
Substantive issues:	Freedom of religion, effective remedy, discrimination
Procedural issues:	Non-exhaustion
Articles of the Covenant:	18 (paras. 1 and 3) read together with 2 (para. 1); and 26
Articles of the Optional Protocol:	5 (para. 2 (b))

GE.15-00017 (E)
1500017

Please recycle

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (112th session)

concerning

Communication No. 2131/2012*

Submitted by:	Viktor Leven (represented by counsel, Anastasia Miller)
Alleged victim:	The author
State party:	Kazakhstan
Date of communication:	19 January 2012 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 October 2014,

Having concluded its consideration of communication No. 2131/2012, submitted to the Human Rights Committee by Viktor Leven under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication, dated 19 January 2012, is Viktor Yakovlevich Leven, a German citizen born in Kazakhstan on 11 March 1973 and Kazakhstan-resident. The author claims to be a victim of violations by Kazakhstan of his rights under article 18 (paras. 1 and 3) read together with article 2 (para. 1), and article 26, of the International Covenant on Civil and Political Rights.[1] The author is represented by counsel, Anastasia Miller, Head of the Kostanay Branch of the Kazakhstan International Bureau on Human Rights and Rule of Law.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Christine Chanet, Ahmed Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Gerald L. Neuman, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.
The text of individual opinions by Committee member Gerald L. Neuman (concurring) and Committee member Fabián Omar Salvioli are appended to the present Views.

[1] The Optional Protocol entered into force for Kazakhstan on 30 September 2009.

The facts as submitted by the author

2.1 The author is of German ethnicity and since his childhood has been a member of the Evangelist Christian Baptist Church in Kazakhstan. He was born in Kazakhstan and lived there until 1992, when he moved to Germany and received German citizenship. In the year 2000 he returned to Kazakhstan together with his wife, with the intention of residing there permanently. The couple have seven children, born between 2001 and 2011. After his return he attended the Evangelist Christian Baptist Church in Esil, Akmolin region, which he had also attended before his departure for Germany. In 2003, he received a permanent residence permit as a foreign citizen residing in Kazakhstan.

2.2 In 2009, the author applied for Kazakh citizenship, and on 3 December 2009 he received permission for release from German citizenship with a view to obtaining Kazakh citizenship. While he was waiting for his application for citizenship to be approved, he was convicted on 14 October 2009 by Esil District Court of committing an administrative offence under article 375 of the Code of Administrative Violations — conducting missionary activity without registration — and was sentenced to a fine of 6,480 tenge and to expulsion from Kazakhstan. The Court ruled that, since the author was a German citizen, his activities — namely repeatedly participating in services in the Evangelist Christian Baptist Church and reading sermons — constituted missionary activity under the definition of the Law on Freedom of Religion and Religious Unions.

2.3 During the court hearing, the author was unrepresented. After his conviction he retained a lawyer, who, on an unspecified date, appealed his conviction. In the appeal, the author claimed that he was not conducting missionary activity but was simply participating in the church services, and that even if he had wanted to register as a foreign missionary that would have been impossible, since he had no accreditation from any church or organization outside of Kazakhstan. On 2 November 2009, Akmolin Regional Court overturned the first instance decision, stating that the author's activities — namely participating in services and reading from the Bible and discussing religious matters — did not correspond to the definition of missionary activity established by the law.

2.4 On 6 November 2009, the District Prosecutor's Office filed a request for a supervisory review of the second instance decision. On 26 November 2009, the Supervisory Plenum of Akmolin Regional Court revoked the second instance decision and confirmed the author's conviction. On 14 December 2009, the author attempted to overturn the decision by filing an application for supervisory review with the General Prosecutor's Office, which was rejected on 26 January 2010 with the explanation that there were no grounds to request a supervisory review.

2.5 The author submits that his permanent residence permit expired on 5 January 2010 and that in June 2010 the Kazakh migration police took the document away from him. At the time of submission he was under threat of immediate deportation and being separated from his family. He is denied Kazakh citizenship. The author contends that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author submits that Kazakhstan violated his rights under article 18, paragraphs 1 and 3, read together with article 2, paragraph 1,of the Covenant, because he was denied his right to freely manifest his religion in worship, observance and practice in community with others. He maintains that he was convicted for reading sermons, praying, and conducting meetings and rituals among the followers of his religious beliefs, and claims that the State punished him for utilizing his right to freely manifest his religion together with other members of the parish. He submits that limitations on freedom of religion under article 18 are legitimate only if established by law and necessary for the protection of public safety,

order, health, or morals or the fundamental rights and freedoms of others. He maintains that the State did not justify the limitation on his freedom of religion, and that the punishment imposed on him for practising it was disproportionate. He further maintains that his actions did not threaten public safety, order, health, or morals, nor did they violate the fundamental rights and freedoms of others.

3.2 The author refers to the Committee's general comments Nos. 22 and 27,[2] and maintains that in the instant case the State party labelled him a missionary, defined in the domestic legislation as a foreign national who engages in preaching or spreading a religion through religious-educational activities, but that he simply returned to his country of birth to live and practise his religion. According to the State party's logic, any foreign citizen practising a religion would be considered a missionary and would be subjected to the requirement to undergo registration and present a number of documents. The author maintains that, even if he tried, he would not be able to present such documents, in particular a copy of the registration of his church in another country or a letter authorizing him to conduct missionary activities. He maintains that the acts of the State party also resulted in violation of its obligations under article 2, paragraph 1, of the Covenant, since they deprived him of the possibility of freely practising his religion.

3.3 The author submits that Kazakhstan violated its obligation under article 26 of the Covenant to refrain from discriminating against him on the basis of on his religious beliefs, because he is refused citizenship and is under threat of deportation and separation from his family only because he is a member of a particular religious denomination and was participating in Evangelist Christian Baptist Church services. In support of his claims, he submits a letter, dated 30 July 2009, from the Migration Police, stating that they do not object to his receiving Kazakh citizenship, provided he renounces his German citizenship. He complied with that condition — evidenced by the 3 December 2009 letter issued by the Federal Office of Administration (Bundesverwaltungsamt) — but was still refused citizenship, after his conviction for "missionary activities".

State party's observations on admissibility

4.1 On 27 April and 24 August 2012, the State party submitted that the author, a German citizen, had conducted missionary activity in Esil Region in 2009, an activity that is forbidden without registration. According to article 4.1 of the Law on Religious Freedom and on Religious Associations in force at the time, foreigners were entitled to conduct missionary activities in the territory of the State party only after registration with the local executive organs. The guilt of the author had been proven by the evidence evaluated by the court. Since he had violated the law, the court declared him guilty in accordance with article 375 of the Code of Administrative Violations and sentenced him to a fine and deportation from Kazakhstan. That ruling was revoked upon appeal by Akmolin Regional Court, on 2 November 2009. The Akmolin Prosecutor's Office disagreed and filed a request for a supervisory review of the Regional Court decision. The request was granted by the Supervisory Plenum of Akmolin Regional Court, which on 26 November 2009 revoked the second instance decision and confirmed the first instance decision. On 14 December 2009, the author filed a request for a supervisory review of that decision to the General Prosecutor's Office. The latter rejected the request on 26 January 2010. The State party considers that the author had exhausted all available domestic remedies regarding the appeal of the court decision.

[2] General comment No. 22 (1993) on the right to freedom of thought, conscience and religion, and general comment No. 27 (1999) on freedom of movement.

4.2 The State party also submits that the author was first issued with a residence permit on 12 March 2003, which was valid until 6 January 2010. On 5 January 2010, the author was issued with another residence permit. On 3 January 2010, the German Embassy in Kazakhstan issued the author with permission for release from German citizenship with a view to obtaining Kazakh citizenship. In a decision by the Directorate of the Migration Police of the Internal Affairs Department of Akmolin Region, dated 20 April 2010, the author was deprived of the right to reside permanently on the territory of Kazakhstan and his residence permit was annulled. That decision was taken in accordance with article 24.6 of the Law on Population Migration in force at the time, in relation to the violation of the domestic laws committed by the author during his residence in Kazakhstan. The author did not appeal the decision.

4.3 The State party further submits that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, according to which the domestic remedies should be exhausted in respect of each of the alleged violations of the Covenant. The State party maintains that the author had the opportunity to appeal the decision of the Migration Police within three months of its issuance, under articles 278–282 of the Civil Procedure Code of Kazakhstan. Missing the statutory three-month deadline for the submission of an appeal is not, as such, grounds for the court to refuse to grant the appeal. The reasons for missing the deadline are investigated during the court hearing and may be one of the grounds for rejection of the appeal. The State party maintains that the author has the opportunity to file an appeal to the court against the 20 April 2010 decision of the Directorate of the Migration Police.

4.4 The State party maintains that the author was not subjected to discrimination on the basis of his religious beliefs, since the conviction for an administrative offence was imposed on him in accordance with the legislation in force, and the actions of the State authorities were lawful. Furthermore, he had been granted a residence permit on two occasions, in 2003 and in 2010.

4.5 With regard to the alleged violation of article 18 of the Covenant, the State party submits that the author was convicted not because he belonged to a particular denomination, but because he had violated the legislation regulating religious associations and the legislation regulating migration. There had been no pressure on the author from the State authorities to renounce his religious beliefs. Article 14 of the Constitution states that no one shall be subject to any discrimination for reasons of attitude towards religion.[3] Article 3, paragraphs 5 and 6, of the Law on Religious Freedom and on Religious Associations does not allow interference with lawful religious activity, violations of the civil rights of individuals because of their attitude towards religion, or insulting their religious feelings. Anyone has the right to have religious convictions, disseminate these, participate in the activities of religious associations and engage in missionary activities in accordance with the legislation of the State party. Therefore, the legislation in force guarantees the freedom of religion of citizens.

Author's comments on the State party's submission

5.1 On 31 May 2012, the author reiterated some of his initial submission (see paras. 2.1, 2.2, 3.1 and 3.3). He also submits that, according to article 24 of the Law on Population Migration, in force at the time, he could not have applied for a residence permit while the decision to deport him was in force. He further submits that he was afraid to go to the Migration Police because he could have been deported at any time, which would have resulted in a prohibition on his entering the country for five years and in separation from his

[3] Text available at http://www.legislationline.org/documents/section/constitutions.

family. The author refers to the Committee's jurisprudence that exhaustion of domestic remedies could be required only to the extent that those remedies were effective and available within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.[4] The author submits that he is not challenging the fact that his residence permit was annulled lawfully. He maintains that his freedom to practise his religion together with others had been violated. If he had not been tried and convicted for praying and conducting religious services together with other members of his church, he would have already received citizenship.

5.2 The author submits that he fully maintains his initial communication and, in particular, that he is denied citizenship, or even a residence permit, and is under threat of deportation and separation from his family, only because he is a member of the Evangelist Christian Baptist Church.

5.3 On 22 October 2012, the author noted that the State party's submission indicated that the domestic legislation in force guaranteed the freedom of religion of citizens, and maintained that this meant that only citizens of Kazakhstan were right-holders. He further notes that the State party's submission indicates that he was convicted for conducting missionary activity without registration, but does not specify what activity he is convicted for. The court decisions, however, state that the author was subjected to punishment because, through preaching and praying and conducting meetings and religious rituals among the followers of the denomination, he was spreading the ideas of Protestantism. The author maintains that, in fact, he was implementing his right under article 18, paragraph 1, of the Covenant.

5.4 The author submits that filing an appeal against the 20 April 2010 decision of the Migration Police is not an effective remedy in his case, because that decision was taken on the basis of the existing decision of the administrative court for his deportation. Furthermore, those appeal proceedings concern issues relating to residence, but do not concern the enjoyment of freedom of religion.

State party's further observations

6. On 11 January 2013, the State party restated the facts relating to the author's conviction. It maintains that the author, a citizen of Germany, was convicted for unlicensed missionary activity, under article 375 of the Code of Administrative Violations, and that his guilt was confirmed by the evidence presented to the court. The State party maintains that freedom of religion is guaranteed by its legislation for all individuals, regardless of citizenship status, and submits that at the time of its submission there were 381 individuals conducting missionary activities, 350 of whom were foreign citizens. It refers to the definition of missionary activity under article 1.1 of the Law on Religious Freedom and on Religious Associations, which defines it as preaching and dissemination via a church's religious education activities that is not described in the charter of the religious association operating on the territory of Kazakhstan. Foreigners are only allowed to conduct such activity after licensing of the association concerned. In other words, the author was convicted for violating the legislation prescribing the mandatory registration of missionaries. The State party reiterates that the author failed to appeal the 20 April 2010 decision of the Migration Police in accordance with the Civil Procedure Code. Currently, the author is residing on the territory of the State party awaiting the decision of the Human Rights Committee regarding his communication. The State party maintains that he was

[4] The author refers to communications Nos. 146/1983 and 148/1983–154/1983, *Baboeram-Adhin et al.* v. *Suriname*, Views adopted on 4 April 1985, at para. 9.2, and No. 458/1991, *Mukong* v. *Cameroon*, Views adopted on 21 July 1994.

never discriminated against on the basis of his religious beliefs and that it had respected its obligation under articles 18, 2 and 26 with regard to the author.

Author's further comments

7. On 5 March 2013, the author submitted that the State party's submission did not contain any new arguments and that he maintained his initial communication.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not the communication is admissible under the Optional Protocol to the Covenant.

8.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the State party's submission that the author had failed to exhaust the domestic legal remedies in that he did not appeal the decision of the Directorate of the Migration Police of the Internal Affairs Department of Akmolin Region, dated 20 April 2010, under the procedure provided for in articles 278–282 of the Civil Procedure Code of Kazakhstan. The Committee observes, however, that even if the author, as part of those appeal proceedings, could have appealed the decision regarding his deportation, this would not have addressed his claim that his conviction for the administrative offence of missionary activities was a violation by the State party of his right to manifest his religion and not to be discriminated against. The Committee observes that, in his communication, the author raises issues under articles 18 and 26 of the Covenant, and finds that article 5, paragraph 2 (b), of the Optional Protocol does not preclude it from considering the communication.

8.4 The Committee takes note of the author's submission that the acts of the State party resulted in violation of its obligations under article 2, paragraph 1, of the Covenant, since they deprived him of the possibility of freely practising his religion. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 of the Covenant lay down general obligations for States parties.[5] It also considers that the provisions of article 2, paragraph 1, "to respect and to ensure… the rights recognized in the present Covenant" do not afford any separate individual right that can be invoked in conjunction with other provisions of the Covenant in a claim in a communication under the Optional Protocol. The Committee therefore considers that the author's claims in that regard are incompatible with article 2 of the Covenant and inadmissible under article 3 of the Optional Protocol.

8.5 The Committee considers that the author has sufficiently substantiated his claims under articles 18 and 26 of the Covenant, for purposes of admissibility. Accordingly, it declares those claims admissible and proceeds to their examination on the merits.

[5] See communications No. 2202/2012, *Rodríguez Castañeda* v. *Mexico*, Views adopted on 18 July 2013, at para. 6.8, No. 1834/2008, *A.P.* v. *Ukraine*, decision adopted on 23 July 2012, at para. 8.5, and No. 1887/2009, *Peirano Basso* v. *Uruguay*, Views adopted on 19 October 2010, at para. 9.4.

Consideration of the merits

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

9.2 In relation to the author's claim under article 18 of the Covenant, the Committee recalls that article 18, paragraph 3, of the Covenant states that the right to freedom to manifest one's religion or beliefs may be subject to certain limitations, but only those prescribed by law and necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. Further, the right to freedom to manifest one's beliefs in worship, observance, practice and teaching encompasses a broad range of acts, including those integral to the conduct by the religious group of its basic affairs, such as the freedom to choose religious leaders, priests, and teachers, and the freedom to establish seminaries or religious schools.[6] In the present case, the Committee notes that, not having been registered as a foreign missionary on behalf of his church, the author was convicted for conducting missionary activity, which consisted of preaching and praying and conducting meetings and religious rituals among the followers of the church. Consistent with its general comment No. 22, the Committee considers that those activities form part of the author's right to manifest his beliefs and that the conviction and sentence to a fine and deportation and the resulting loss of his residence permit constitute limitations of that right.

9.3 The Committee must now address the question of whether the relevant limitations on the author's right to manifest his religion are "necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others", within the meaning of article 18, paragraph 3, of the Covenant. The Committee recalls its general comment No. 22, which states that paragraph 3 of article 18 is to be interpreted strictly, and that limitations may be applied only for those purposes for which they were prescribed and must be directly related to and proportionate to the specific need on which they are predicated. The Committee further recalls that, in interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26.[7]

9.4 The Committee notes that the State party has not advanced any argument as to why it is necessary, for the purposes of article 18, paragraph 3, for the author, in order to engage in prayer together with his associates from the same church, in conducting meetings between them in the premises of the church and in preaching, to first register as a foreign missionary. In fact, the State party has not sought to justify the infringement of rights, other than by citing a provision of the domestic law that requires foreign missionaries to register their religious associations. The Committee reiterates that article 18, paragraph 1, of the Covenant protects the right of all members of a religious congregation, not only missionaries, and not only citizens, to manifest their religion in community with others, in worship, observance, practice and teaching. The Committee also notes that the author's submission, uncontested by the State party, that the church that he was frequenting had existed in Kazakhstan since he was a child and that he had participated in its religious activities before and after he had obtained German citizenship. The Committee concludes that the punishment imposed on the author, and in particular its harsh consequences for the author, who is facing deportation, amount to a limitation of the author's right to manifest his religion under article 18, paragraph 1; that the limitation has not been shown to serve

[6] See general comment No. 22, para. 4, and, for example, communication No. 721/1996, *Boodoo* v. *Trinidad and Tobago*, Views adopted on 2 April 2002, at para. 6.6.

[7] See general comment No. 22, para. 8.

any legitimate purpose identified in article 18, paragraph 3; and neither has the State party shown that this sweeping limitation of the right to manifest religion is proportionate to any legitimate purpose that it might serve. The limitation therefore does not meet the requirements of article 18, paragraph 3, and the Committee accordingly finds that the author's rights under article 18, paragraph 1, have been violated.

9.5 In the light of its finding that there has been a violation of article 18 of the Covenant, the Committee will not pronounce on a possible violation of article 26 of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it discloses a violation by the State party of the author's rights under article 18 of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including review of his conviction and review of the cancellation of his residence permit. The State party is also under an obligation to prevent similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, to have them translated into the official languages of the State party, and to have them widely disseminated.

Appendices

Appendix I

[Original: English]

Individual opinion of Committee member Gerald L. Neuman (concurring)

1. I concur fully in the reasoning and conclusions of the Committee, and write separately to make two brief observations.

2. In paragraph 8.4 of its Views, the Committee discusses a claim relating to article 2, paragraph 1, of the Covenant, which apparently asserts that by interfering with the author's right to practice his religion, the State party failed to "to respect and to ensure" to him his right under article 18 of the Covenant. The Committee finds this claim under article 2, paragraph 1, in conjunction with article 18, inadmissible, because there is no such individual right in addition to the right under article 18 itself. The Committee subsequently goes on to find a violation of article 18, taken alone. The Committee does not need to combine article 18 with States' basic obligation under article 2, paragraph 1, in order to find a violation, and if the Committee added such a violation in the present case, it would have to add redundant violations involving article 2, paragraph 1, in every instance in which it finds a violation of a substantive right. This would make no practical contribution to the protection of human rights.[a]

3. Paragraph 8.4 does not, however, call into question the Committee's traditional practice of recognizing discrimination with respect to a right protected by articles 6 to 27 of the Covenant as raising issues under the final phrase of article 2, paragraph 1, in conjunction with that substantive right.[b] The author's submissions do not appear to assert a claim of that kind in relation to article 2, paragraph 1.

[a] See communication No. 1874/2009, *Mihoubi* v. *Algeria*, Views adopted on 18 October 2013 (individual opinion of Committee member Gerald L. Neuman (concurring)).

[b] Article 2, paragraph 1, obliges States parties to respect and to ensure Covenant rights "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". See, for example, communication No. 1764/2008, *Alekperov* v. *Russian Federation*, Views adopted on 21 October 2013, para. 8.3.

Appendix II

[Original: Spanish]

Individual opinion of Committee member Fabián Omar Salvioli

1. I share the opinion of the Committee in *Leven* v. *Kazakhstan* (communication No. 2131/2012). However, I do not agree with the statement made in the second-to-last sentence of paragraph 8.4 of the Committee's Views, in which it is asserted that the provisions of article 2, paragraph 1, "do not afford any separate individual right that can be invoked in conjunction with other provisions of the Covenant in a claim in a communication under the Optional Protocol".

2. The reference made by the Committee to the jurisprudence cited in footnote 5 of the Committee's Views is incomplete. In fact, the jurisprudence indicates that article 2 of the Covenant imposes general obligations on States parties and that the invocation of that article alone may not give rise to a claim in a communication under the Optional Protocol. It does not say that any of the provisions of article 2 may not be invoked in conjunction with another provision of the Covenant.

3. It therefore follows from the jurisprudence that, a contrario sensu, the provisions of article 2 can be invoked in conjunction with a right set forth in articles 6 to 27 of the Covenant; otherwise, there would not be a vast body of jurisprudence in which the Committee has established the international responsibility of States parties for violations of article 2, paragraph 3, read in conjunction with other provisions.[a]

4. The general comment on article 2 of the Covenant does not make any differentiation among the different paragraphs of article 2 in terms of the possibility of invoking or applying them, and the Committee should therefore not arrive at a conclusion that indicates otherwise. Moreover, the Committee also has jurisprudence regarding article 2, paragraph 1: in the case of *Toonen* v. *Australia*, it found the State liable for a violation of article 17, read in conjunction with article 2, paragraph 1, of the Covenant.[b]

5. In the present case of *Leven* v. *Kazakhstan*, no act of discrimination on the basis of nationality or any other ground has been proven, and there is thus no reason for the Committee to pronounce on possible violations of article 26, or article 2, paragraph 1, of the Covenant. This is the reason — rather than the inapt line of reasoning advanced in paragraph 8.4 of the Committee's Views — that leads me to share the opinion of the Committee on this matter. I also agree with the conclusion that the facts reveal a violation of article 18 of the Covenant.

---

[a] I will not cite the jurisprudence regarding this matter, since there are at least 100 different cases in which the Committee arrived at this same decision, including cases resolved during the same session at which the Committee adopted its Views in the case at hand.

[b] See communication No. 488/1992, *Toonen* v. *Australia*, Views adopted on 31 March 1994, paras. 9 and 10.